

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MARK AKEY,

Case No. 16-CV-1049-PP

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of the
Social Security Administration,

Defendant.

**ORDER GRANTING PLAINTIFF'S
REQUEST TO PROCEED *IN FORMA PAUPERIS* (Dkt. No. 3)**

On August 8, 2016, the plaintiff filed a complaint requesting that the court review the denial of his social security benefits. Dkt. No. 1. Along with the complaint, the plaintiff filed an affidavit in support of his motion that the court allow him to proceed with the case without paying the filing fee. Dkt. No. 3. In order to allow a plaintiff to proceed without paying the filing fee, the court must first decide whether the plaintiff has the ability to pay the filing fee, and if not, must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and (e)(2)(B)(i).

In the affidavit, the plaintiff indicates that he is unemployed, but that he receives Social Security income in the amount of \$817. Dkt. No. 3 at 1-2. His monthly expenses are equal to his income. *Id.* at 3. He also receives Medicaid and help from his elderly mother. *Id.* at 4. The plaintiff has demonstrated that he cannot pay the full amount of the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989)); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993).

A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

In his complaint the plaintiff seeks review of the Commissioner's decision denying him disability and social security insurance. Dkt. No. 1 at 2. The plaintiff asserts that he was disabled during the time period involved in the case, and says that he "believes the Commissioner's unfavorable conclusions and findings of fact are not supported by substantial evidence; and/or are contrary to law and regulation." Id. He also attached the unfavorable decision from the Administrative Law Judge and the notice of action from the Appeals Council. Dkt No. 1-2; Dkt. No. 1-3.

Based on the allegations of the complaint, the court cannot find at this point that the plaintiff's claims are frivolous or without merit. At this early stage in the case, the court concludes that there may be a basis in law or fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **ORDERS** that the plaintiff's motion for leave to appeal *in forma pauperis* (Dkt. No. 3) is **GRANTED**.

Dated in Milwaukee, Wisconsin this 17th day of August, 2016.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge